

4.

COMMONWEALTH OF MASSACHUSETTS

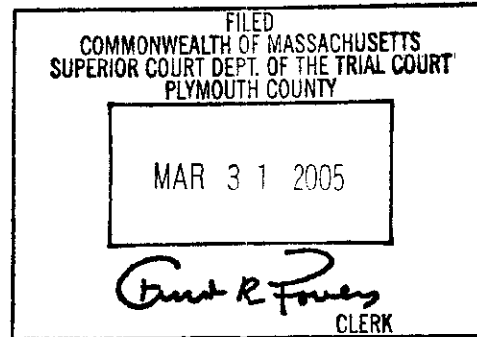
PLYMOUTH, SS.

SUPERIOR COURT
CIVIL ACTION NO. 05-0278B

THOMAS M. KELLEY,
Plaintiff,

VS.

TOWN OF PLYMOUTH and
ROBERT J. POMEROY, as Chief of the
Plymouth Police Department and
Individually,
Defendants.



WRITTEN NOTICE OF REMOVAL TO
FEDERAL COURT PURSUANT TO 28 U.S.C. §1446(d)

A Notice of Removal of the above-captioned action from the Superior Court of the Commonwealth of Massachusetts, Plymouth County, to the United States District Court for the District of Massachusetts (a copy of which Notice is filed herewith) was duly filed on March 28, 2005, in the United States District Court for the District of Massachusetts. A copy of the Notice of Removal, certified by the United States District Court for the District of Massachusetts, having been duly filed with the Clerk for the Superior Court of the Commonwealth of Massachusetts, Plymouth County, in accordance with 28 U.S.C. §1446(d), the Superior Court shall proceed no further herein unless and until the case is remanded.

Respectfully submitted,
Defendants,
By their attorney,

Leonard H. Kesten
Leonard H. Kesten, BB0# 542042
BRODY, HARDOON, PERKINS & KESTEN, LLP
One Exeter, Plaza, 12th Floor
Boston, MA 02116
(617) 880-7100

A TRUE COPY ATTEST

Grand R. Fowers
CLERK

Dated: March 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document
was served upon the attorney of record for each other
party by mail on 3/30/05

Leonard H. Kesten

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

COPY

CIVIL ACTION NO. 05 10596 NMG
MAR 28 P 3:13
DISTRICT OF MASS.

THOMAS KELLEY,
Plaintiff,

VS.

TOWN OF PLYMOUTH and
ROBERT J. POMEROY, as Chief of the
Plymouth Police Department and
Individually,
Defendants.

I hereby certify on 3/28/05 that the
foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☐ electronically filed original filed on 3/28/05
☒ original filed in my office on 3/28/05

By: _____
Deputy Clerk

DEFENDANTS' NOTICE OF REMOVAL OF ACTION FROM STATE COURT

Pursuant to 28 U.S.C. §1441(b) and 1446, defendants petition for removal of this action to the United States District Court for the District of Massachusetts. As grounds therefore, the defendants state as follows:

1. On or about March 7, 2003, the plaintiff filed this suit in the Plymouth Superior Court, Civil Action No. 02-1859.
2. On March 11, 2005, the plaintiffs' complaint was served upon the defendants. Attached as Exhibit A is a copy of the plaintiffs' complaint and summons, which were served upon the defendants.
3. In the complaint, the plaintiff alleges "42 U.S.C. §1983 provides a cause of action for the violation of a citizen's rights protected by the Constitution of the United States."
4. Because this matter is an action arising under federal law of which this Court has original jurisdiction, as authorized by 28 U.S.C. §1331, it is subject to removal under 28 U.S.C. §1441(b).

Thomas M. Kelley, Plaintiff(s)

vs.

Town of Plymouth & Robert J. Pomeroy as
Chief of Police & Individually, Defendant(s)

RECEIVED

MAR 17 2005

PLYMOUTH SUPERIOR COURT

SUMMONS

To the above-named defendant: Robert J. Pomeroy, Individually, Plymouth Police
Dept. 20 Long Pond Rd., PlymouthYou are hereby summoned and required to serve upon Joseph R. Gallitano, Plaintiff's
attorney, whose address is 34 Main St., Ext. Plymouth, MA 02360, with your answer to the complaint
which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day
of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's complaint. If you fail to do so, you may be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Plymouth the 9th day of

March

in the year of our Lord Two thousand and five.

MAR 17 2005

Grand R. Fowles

Grand R. Fowles
CLERK

NOTES

1. This summons is issued pursuant to RULE 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on _____, 2004, I served a copy of the within summons
together with a copy with a copy of the complaint in this action, upon the within-named defendant _____, in the
following manner(See Mass. R. Civ. P. 4(d)(1-5)):Plymouth County Sheriff's Department • P.O. Box 1663 • Brockton, MA 02303 • 508-580-2110
Plymouth, ss.

March 14, 2005

I hereby certify and return that on 3/11/2005 at 3:24PM I served a true and attested copy of the summons, verified
complaint, civil action cover sheet, tracking order, verification of complaint, and exhibits in this action in the following
manner: To wit, by delivering to Officer Dave Nelson, agent, person in charge at the time of service for Robert J.
Pomeroy, individually, at Plymouth Police Dept., 20 Long Pond Road, Plymouth, MA 02360. Attest (1 copy) (\$5.00),
P&H (no mailing) (\$1.00), Basic Service Fee (\$30.00) Total Charges \$36.00

A TRUE COPY ATTEST

Grand R. Fowles
CLERK

Deputy Sheriff Russell F. Tinkham, Jr.

Russell F. Tinkham, Jr.
Deputy Sheriff

attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office at Plymouth.

Thomas M. Kelley
....., Plaintiff(s)

vs.

Town of Plymouth & Robert J. Pomeroy as
Chief of Police & Individually
....., Defendant(s)

RECEIVED

MAR 17 2005

PLYMOUTH SUPERIOR COURT

SUMMONS

To the above-named defendant: Robert J. Pomeroy, Chief of Police, Plymouth Police
Dept. 20 Long Pond Rd., Plymouth

You are hereby summoned and required to serve upon Joseph R. Gallitano, Plaintiff's
attorney, whose address is 34 Main St. Ext. Plymouth MA 02360 an answer to the complaint
which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day
of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Plymouth the 9th day of

March

five.

....., in the year of our Lord Two thousand and

Barbara J. Rouse
CLERK

NOTES

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2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to the particular
defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-
Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on, 2004, I served a copy of the within summons
together with a copy with a copy of the complaint in this action, upon the within-named defendant in the
following manner(See Mass. R. Civ. P. 4.1):



Plymouth County Sheriff's Department • P.O. Box 1663 • Brockton, MA 02303 • 508-580-2110
Plymouth, ss.

March 14, 2005

I hereby certify and return that on 3/11/2005 at 3:24PM I served a true and attested copy of the summons, verified
complaint, civil action cover sheet, tracking order, verification of complaint, and exhibits in this action in the following
manner: To wit, by delivering to Officer Dave Nelson, agent, person in charge at the time of service for Robert J.
Pomeroy, Chief of Police, at, 20 Long Pond Road, Plymouth, MA 02360. Attest (1 copy) (\$5.00), P&H (no mailing)
(\$1.00), Basic Service Fee (\$30.00), Conveyance (\$4.50), Travel (\$3.20) Total Charges \$43.70

A TRUE COPY ATTEST

Barbara J. Rouse
CLERK

Deputy Sheriff Russell F. Tinkham, Jr.

Russell F. Tinkham, Jr.
Deputy Sheriff

ATTORNEY JOSEPH R. GALLITANO
& ASSOCIATES

34 MAIN STREET EXT., SUITE 202, PLYMOUTH, MASSACHUSETTS 02360
(508) 746-1500 FAX (508) 747-1150

March 16, 2005

Clerk, Civil
Plymouth Superior Court
Court Street
Plymouth, MA 02360

RE: Thomas M. Kelley v. Town of Plymouth, et al

Dear Sir or Madam:

Enclosed for filing in the above-captioned matter are the original Summonses with returns of service.

Thank you for your cooperation in this matter.

Very truly yours,



Joseph R. Gallitano

JRG/pjm

Enclosures

RECEIVED

MAR 17 2005

PLYMOUTH SUPERIOR COURT

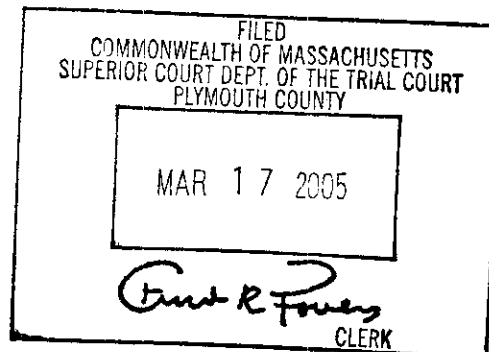
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION NO. 05-0278B

Thomas M. Kelley, Plaintiff(s)

vs.

Town of Plymouth & Robert J. Pomeroy
as Chief of Police & Individually
Defendant(s)

SUMMONS



Town of Plymouth, through its agent, Kenneth A. Tavares, Ch. of Bd. of Selectmen, Plymouth Town Hall, 11 Lincoln St., Plymouth

You are hereby summoned and required to serve upon Joseph R. Gallitano, Plaintiff's attorney, whose address is 34 Main St. Ext. Plymouth MA 02360, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Plymouth the 9th day of

March, in the year of our Lord Two thousand and five.

G. R. Fowles
CLERK

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on 3/11/2005, 2004, I served a copy of the within summons together with a copy with a copy of the complaint in this action, upon the within-named defendant, in the following manner(See Mass. R. Civ. P. 4(d)(1-5)):



Plymouth County Sheriff's Department • P.O. Box 1663 • Brockton, MA 02303 • 508-580-2110
Plymouth, ss.

March 15, 2005

I hereby certify and return that on 3/11/2005 at 3:09PM I served a true and attested copy of the summons, verified complaint, civil action cover sheet, tracking order, verification of complaint, and exhibits in this action in the following manner: To wit, by delivering in hand to Lisa Johnson, agent, person in charge at the time of service for Town of Plymouth, at Town Hall, 11 Lincoln Street Plymouth, MA. Attest (1 copy) (\$5.00), P&H (no mailing) (\$1.00), Basic Service Fee (\$30.00) Total Charges \$36.00

A TRUE COPY ATTEST

G. R. Fowles
CLERK

Deputy Sheriff Russell F. Tinkham, Jr.

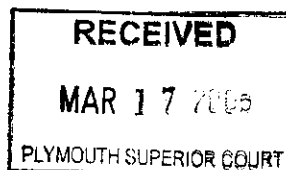
Russell F. Tinkham, Jr.
Deputy Sheriff

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE
 DATE 04-19-2010 BY 60322/ALM/STP

Thomas M. Kelley, Plaintiff(s)

vs.

Town of Plymouth & Robert J. Pomeroy
as Chief of Police & Individually
Defendant(s)



SUMMONS

To the above-named defendant: Town of Plymouth through its agent, Lawrence Pizer,
Town Clerk, Plymouth Town Hall, 11 Lincoln St., Plymouth

You are hereby summoned and required to serve upon Joseph R. Gallitano, Plaintiff's
attorney, whose address is 34 Main St., Ext. Plymouth, MA 02360, answer to the complaint
which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day
of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse Esquire, at Plymouth the 9th day of
March, in the year of our Lord Two thousand and five.

Barbara J. Rouse
CLERK

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to the particular
defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-
Equitable Relief-Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on March 15, 2005, I served a copy of the within summons
together with a copy with a copy of the complaint in this action, upon the within-named defendant, in the
following manner(See Mass. R. Civ. P. 4(d)(1-5)):



Plymouth County Sheriff's Department • P.O. Box 1663 • Brockton, MA 02303 • 508-580-2110
Plymouth, ss.

March 15, 2005

I hereby certify and return that on 3/11/2005 at 3:05PM I served a true and attested copy of the summons, verified
complaint, civil action cover sheet, tracking order, verification of complaint, and exhibits in this action in the following
manner: To wit, by delivering in hand to Lawrence Pizer, agent, person in charge at the time of service for Town of
Plymouth, at, Town Hall, 11 Lincoln Street Plymouth, MA. Attest (1 copy) (\$5.00), P&H (no mailing) (\$1.00), Basic
Service Fee (\$30.00) Total Charges \$36.00

A TRUE COPY ATTEST

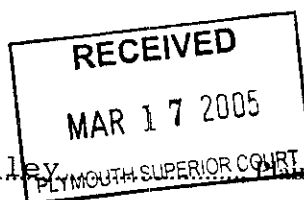
Barbara J. Rouse
CLERK

Deputy Sheriff Russell F. Tinkham, Jr.

Russell F. Tinkham, Jr.
Deputy Sheriff

PLYMOUTH, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT OF THE
TRIAL COURT OF THE COMMONWEALTH
CIVIL ACTION NO. 05-0278B

Thomas M. Kelley, Plaintiff(s)

vs.

Town of Plymouth & Robert J. Pomeroy
as Chief of Police & Individually, Defendant(s)SUMMONS

To the above-named defendant: Town of Plymouth through its agent, Mark Silvia,
Town Manager, Plymouth Town Hall 11 Lincoln St. Plymouth
You are hereby summoned and required to serve upon Joseph R. Gallitano, Plaintiff
attorney, whose address is 34 Main St. Ext., Plymouth, MA 02360 answer to the complaint
which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day
of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the
complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at
Plymouth either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject
matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, SUZANNE V. DELVECCHIO Esquire, at Plymouth the 9th day of
March, in the year of our Lord Two thousand and ~~four~~ five.

CLERK

NOTES

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2. When more than one defendant is involved, the names of all defendants should appear in the caption.
If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To the plaintiff's attorney: please circle type of action involved-Tort-Motor Vehicle Tort-Contract-Equitable Relief-Other.

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I hereby certify and return that on _____, 2004, I served a copy of the within summons
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Plymouth County Sheriff's Department • P.O. Box 1663 • Brockton, MA 02303 • 508-580-2110
Plymouth, ss.

March 15, 2005

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manner: To wit, by delivering in hand to Lisa Johnson, agent, person in charge at the time of service for Town of
Plymouth, at, Town Hall, 11 Lincoln Street Plymouth, MA. Attest (1 copy) (\$5.00), P&H (no mailing) (\$1.00), Basic
Service Fee (\$30.00), Conveyance (\$1.50), Travel (\$3.20) Total Charges \$40.70

CLERK

Deputy Sheriff Russell F. Tinkham, Jr.

Deputy Sheriff

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office at Plymouth.

Commonwealth of Massachusetts
County of Plymouth
The Superior Court

CIVIL DOCKET# **PLCV2005-00278-B**

RE: **Kelley v Plymouth et al**

TO: Joseph R Gallitano, Esquire
34 Main St Extension
Suite#202
Plymouth, MA 02360

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	06/07/2005
Response to the complaint filed (also see MRCP 12)	08/06/2005
All motions under MRCP 12, 19, and 20 filed	08/06/2005
All motions under MRCP 15 filed	08/06/2005
All discovery requests and depositions completed	01/03/2006
All motions under MRCP 56 served and heard	02/02/2006
Final pre-trial conference held and firm trial date set	03/04/2006
Case disposed	05/03/2006

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session **B** sitting in **CtRm 1 (Court Street, Plymouth)** at **Plymouth Superior Court**.

Dated: 03/09/2005

Francis R. Powers
Clerk of the Courts

BY: Adam Baler
Assistant Clerk

Location: CtRm 1 (Court Street, Plymouth)
Telephone: (508) 747-6911

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>

cvdtracf_2.wpd 447799 inidoc01 santospa

A TRUE COPY ATTEST

Francis R. Powers
CLERK

CIVIL ACTION COVER SHEET

SUPERIOR COURT DEPARTMENT

Plymouth

Division



DOCKET NUMBER

05-0278B

PLAINTIFF(S)

Thomas M. Kelley

DEFENDANT(S)

Town of Plymouth and
Robert J. Pomeroy as Chief of the
Plymouth Police Dept. & Individually

ATTORNEY(S) FIRM NAME, ADDRESS AND TEL)

Joseph R. Gallitano, Esq.
34 Main St. Ext., Suite 202
Plymouth MA 02360 (508) 746-1500
Board of Bar Overseers # (Required) 183700

ATTORNEY(S) (if known)

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

ORIGIN CODE AND TRACK DESIGNATION

Place an ☒ in one box only:

- ☒ 1. F01 Original Complaint
☐ 2. F02 Removal to Sup. Ct. c231, s. 104 (F)
☐ 3. F03 Retransfer to Sup. Ct. c231, s. 102C (X)

- ☐ 4. F04 District Ct. Appeal c231, s. 97 (X)
☐ 5. F05 Reactivated after Briefing Relief from judgment/order (Mass. R. CRP, 60 (X))
☐ 6. E10 Summary process appeal (X)

TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)

CODE NO.
B99TYPE OF ACTION (specify)
Tort-Gross NegligenceTRACK
(F)IS THIS A JURY CASE?
☒ Yes ☐ No

1. PLEASE GIVE A CONCISE STATEMENT OF THE FACTS: (Required in ALL Types of Actions)

The Defendants are in violation of the State Whistle Blower Statute, M.G.L. Ch. 149, Sec. 185. Gross negligence, willful, wanton and reckless conduct and violation of Plaintiff's rights under the 14th amendment and under 42 USC Sec. 1983 and denial of the Plaintiff's rights under M.G.L. Ch. 41 Sec. 111F.

2. IN A CONTRACT ACTION (CODE A) OR A TORT ACTION (CODE B) STATE, WITH PARTICULARITY, MONEY DAMAGES WHICH WOULD WARRANT A REASONABLE LIKELIHOOD THAT RECOVERY WOULD EXCEED \$25,000:

Money damages include payment of all vacation time, loss of salary and benefits for 16 years he would have served to his normal retirement in the approximate amount of \$220,000.00, plus punitive (treble) damages, attorney fees and court costs.

3. PLEASE IDENTIFY, BY CASE NUMBER, NAME AND DIVISION, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT.

None.

SIGNATURE OF ATTORNEY OF RECORD OR PLAINTIFF

DATE

3/7/05

OFFICE USE ONLY - DO NOT WRITE BELOW THIS LINE

DISPOSITION

A. Judgment Entered

- ☐ 1. Before jury trial or non-jury hearing
☐ 2. During jury trial or non-jury hearing
☐ 3. After jury verdict
☐ 4. After court finding
☐ 5. After post trial motion

B. No Judgment Entered

- ☐ 6. Transferred to District Court under G.L. c.231, s.102C.

Disposition Date _____

RECEIVED

BY:
DATE

DISPOSITION ENTERED

BY:
DATE:

A TRUE COPY ATTEST

Grand R. Fawcett
CLERK

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

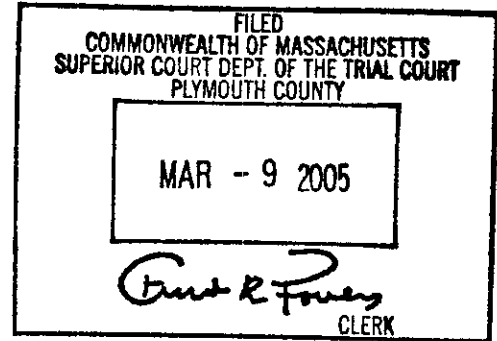
SUPERIOR COURT

C.A. NO. 05-0278B

THOMAS M. KELLEY,
Plaintiff,

v.

THE TOWN OF PLYMOUTH, and ROBERT J.
POMEROY, as Chief of the Plymouth Police
Department and Individually,
Defendants.



VERIFIED COMPLAINT

1. The Plaintiff, Thomas M. Kelley (hereinafter "Kelley"), is an individual residing at 119 Arlington Rd., Plymouth, Plymouth County, MA 02360.
2. The Defendant, Town of Plymouth (hereinafter "Plymouth"), is a duly incorporated municipality in the Commonwealth of Massachusetts, with a usual place of business at Plymouth Town Hall, 11 Lincoln Street, Plymouth, MA.
3. Mark Silvia, is the Town Manager and Chief Executive Officer for the Town of Plymouth, with a place of business at Plymouth Town Hall, 11 Lincoln Street, Plymouth, MA, and Eleanor Beth was serving as Town Manager at the time of the alleged incident set forth herein and Lawrence Pizer serves as Town Clerk for the Defendant, Plymouth, with offices at 11 Lincoln Street, Plymouth, MA and is the authorized officer for receipt of service of process in matters of litigation, involving the Town of Plymouth, and Kenneth A. Tavares as Chairman of the Board of Selectman and Chief Elected Officer of Plymouth, with a place of business at Plymouth Town Hall, 11 Lincoln Street, Plymouth MA.

\$285
\$305
le 80m. in hand
TRACK

4. The Defendant, Chief Robert J. Pomeroy (hereinafter "Pomeroy"), individually, who resides at 244 Valley Road, Plymouth, Plymouth County, MA, and in his official capacity as Chief of Police, Plymouth Police Department, who at all times relevant to the Complaint was the Chief of Police for the Plymouth Police Department, with a usual place of business at 20 Long Pond Road, Plymouth, MA 02360.

FACTS

5. Kelley, was appointed as a Police Officer in the Town of Plymouth on September 19, 1977.

6. On May 25, 2003, Pomeroy ordered members of the Plymouth police force to participate in an extremely rigorous and physically demanding drill situation, simulating the Columbine hostage incident in Colorado, in which students in a high school held various parties as hostage and were heavily armed at the time.

7. The drill situation was conducted at the Plymouth North High School on the aforesaid date and Kelley was required to participate in the drill.

8. Previous to May 25, 2003, there had been a substantial record of Kelley's physical impairment. He had already contracted Lyme Disease, and he was suffering from Meniere's Disease. Kelley was taking medication for both conditions.

9. Pomeroy and Plymouth were well aware of Kelley's medical condition at the time that Kelley was ordered to participate in the drill.

10. During the drill on May 25, 2003, Kelley experienced a heart incident similar to a heart attack, causing him to collapse and requiring him to be hospitalized.

11. Kelley was taken to the Jordan Hospital for emergency treatment and then transferred to Beth Israel Hospital in Boston for treatment, where he underwent heart

surgery on May 26, 2003. As a result of said injury, Kelley was forced to accept a disability retirement.

12. Kelley's retirement was approved by the Plymouth Retirement Board on the basis of an Independent Medical Panel, appointed and assigned by the State Retirement System that concluded that the cardiac incident he suffered, was a direct result of the May 25, 2003, Columbine drill. This left Kelley with a permanent disability, making it impossible for him to serve as a police officer any longer in Plymouth.

13. The Independent Medical Panel also determined that Kelley's injury suffered on May 25, 2003, was an injury in the line of duty under Chapter 41, Section 111F, and thus he was entitled to any medical benefits related thereto as well as to his disability retirement.

14. Prior to the May 25, 2003, drill, the Plymouth Police Union ("Union"), through its president and other representatives, approached Pomeroy and requested that he institute a protocol to review members of the force who might not be physically able to undergo such a rigorous and stressful drill situation.

15. The Union advised Pomeroy that there were members of the force who had existing medical conditions that could possibly put them at risk for injury, some of which could even be life threatening.

16. Pomeroy refused to establish or institute any type of protocol and insisted that all members of the force would take part in the drill regardless of their medical situation or previous medical history.

17. After he was approved for disability retirement, Kelley submitted a request for reimbursement for vacation time he had to use before he was relieved of duty and put officially on disability. Under Mass. General Laws Ch. 41, Section 111F, Kelley was

entitled to reimbursement of \$2,000.00 for vacation days he had to use for sick leave, after May 25, 2003.

18. Pomeroy refused to reimburse Kelley as requested. Moreover, the Personnel Board of the Town of Plymouth refused to authorize the reimbursement because Pomeroy refuted that Kelley's injury was a result of the May 25, 2003, Columbine-like drill.

19. Pomeroy maintained that Kelley's use of vacation benefits as sick time was not related in any way to an injury on duty.

20. Pomeroy made this determination in bad faith because he had been informed that the Independent Medical Panel had in fact ruled Kelley's injury was on duty and directly related to the May 25, 2003, drill.

21. About a year before the drill, Kelley in his capacity as a Town Meeting Member and a member of the Plymouth Retirement Board, raised an issue regarding Pomeroy's use of funds to reimburse himself for benefits that were not included as part of his income and should have been shown as income to him in his departmental budget. Kelley alleged Pomeroy was accepting compensation and not showing it in his budget in a manner that was prohibited by statute.

22. Kelley reported this situation to the Inspector General's Office of the Commonwealth of Massachusetts. The Office investigated the matter and reported to the Town that the manner in which Pomeroy was compensating himself for educational benefits without declaring it under the line item budget area for compensation to him for income and without authorization per a by-law or written agreement with the Town was inappropriate and in violation of state law, and required Town Meeting action to correct the situation.

23. Subsequently, Town Meeting voted to ratify the past inappropriate compensation and authorization of funds to Pomeroy to make said payment in compliance with state regulations.

24. Pomeroy was well aware that Kelley had reported him to the Inspector General's Office.

25. When Pomeroy insisted that Kelley be included in the Columbine-like drill on May 25, 2003, he knew that Kelley had reported him to the Inspector General's Office, and he knew Kelley's medical conditions were preexisting and would place him in harm.

26. Further, Pomeroy was well aware that Kelley's cardiac incident on May 25, 2003, was a result of the drill, and was well aware of the report of the Independent Medical Panel, which reviewed Kelley's injury on two points, one as an application for disability retirement and one as an injury on duty, and concluded that his condition was the result of an injury on duty on May 25, 2003, and directly related to the Columbine-like drill, which was the proximate cause of Kelley's injury.

27. Despite this information, Pomeroy refused to compensate Kelley for vacation time, which he legitimately had to use and was entitled to have reimbursed under Chapter 41, Section 111F.

CAUSES OF ACTION

**COUNT I: VIOLATION OF THE STATE WHISTLE BLOWER STATUTE
M.G. L. Chap. 149, Sec. 185**

28. Kelley repeats and reavers paragraphs 1 through 27 as if expressly set forth fully herein.

29. Kelley is an employee under M.G.L. 149, Section 185, and his activities in reporting violations and improprieties of other employees and supervisors was an activity protected by the statute.

30. Pomeroy's failure to pay for Kelley's vacation time under a Chapter 41, Section 111F, the failure to screen members of the police force and prevent Kelley in particular from participating in the aforesaid strenuous and stressful drill, were retaliatory in nature.

31. Said retaliation by Pomeroy was because Kelley reported Pomeroy to the Inspector General's Office.

32. Pomeroy's denial and the denial by the Plymouth Town Manager at that time, Pamela Nolan, of Chapter 41 Section 111F funds due Kelley was also retaliatory.

33. All aforesaid actions were in violation of Chapter 149, Section 185, which prohibits retaliatory actions against employees who have reported wrongdoing to a disciplinary body/office or public policy-making body such as the Inspector General's Office.

34. As a result of the actions taken by Plymouth through its Town Manager and Pomeroy, Kelley is entitled to triple damages, attorney's fees and reasonable court costs.

35. Kelley's claims include the payment of all vacation time as well as payment for loss of all salary and benefits for the sixteen years he would have served to his normal retirement date, all in an amount of approximately \$220,000.00.

Wherefore, Kelley demands a judgment for treble damages, both compensatory and punitive, against the Defendants in an amount this Court deems just and appropriate with interest, and cost of this action including attorney's fees.

**COUNT II: GROSS NEGLIGENCE ,WILLFUL, WANTON AND RECKLESS
CONDUCT**

36. The Plaintiff repeats and reavers paragraphs 1 through 35 as if expressly set forth fully herein.

37. The actions of the Town of Plymouth and the Plymouth Police Department, through Pomeroy, by failing to screen the members of the Department who would be taking part in the drill, in which the men were to be put through a rigorous, physically demanding, and stressful drill involving a hostage situation similar to the Columbine incident, resulted in Kelley suffering a cardiac incident and life-altering injury.

38. It was well known by Pomeroy and other supervisory members of the Police Department, and well documented in Kelley's personnel file, that he had several physical illnesses for which he was being treated and being medicated; and therefore, that his participation in such an activity would place him at great risk.

39. The Defendants owed Kelley a duty of care not to expose him needlessly to a dangerous exercise considering his pre-existing conditions.

40. The decisions to make all members of the Department, regardless of their physical condition, participate in this exercise was willful, wanton, and reckless conduct by Plymouth, its Police Department, and in particular Pomeroy.

41. Specifically, the Town, through Pomeroy, was negligent by failing to institute a protocol to screen members of the department who would be at risk due to existing medical conditions known to the department.

42. The aforesaid negligence of the Defendants was the proximate cause of Kelley's injuries.

43. Said acts were also intentional in nature, constituting retaliation against a whistle blower.

44. The Defendants' action forced Kelley into an early disability retirement, which was not his choice and denied him another sixteen years of service, depriving him of 20% of his salary over the next sixteen years, as well as benefits and contribution to his normal retirement, resulting in a loss of income to him in excess of \$200,000.00.

Wherefore, Kelley demands a judgment for damages, both compensatory and punitive, against the Defendants in an amount this Court deems just and appropriate with interest, and cost of this action including attorney's fees.

**Count III: VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE
14TH AMENDMENT EQUAL PROTECTION UNDER THE LAW
AND HIS RIGHTS UNDER 42 USC, SECTION 1983**

45. Kelley repeats and reavers paragraphs 1 through 44 as if expressly set forth fully herein.

46. Kelley's constitutional rights were violated in that no other member in a similar position of the Department or any other employee in the Town of Plymouth in a similar position, has been treated in such fashion and therefore the actions of the Town were in violation of his 14th Amendment Rights, as well as federal statutes protecting him from such treatment and providing for equal protection under the law.

47. Kelley was routinely harassed by Pomeroy and treated differently then other officers in the Plymouth Police Department by monitoring his every movement on a daily

basis. See Affidavit of Kevin Fahey, annexed hereto and made a part hereof and marked as Exhibit A.

48. Kelley served on the Plymouth Retirement Board, as did other Town employees. But, contrary to standard operating procedures, Plymouth and Pomeroy insisted upon reimbursement by the Retirement Board of any salary time Kelley spent on Retirement Board business. Kelley was the only Town employee who was serving or who had served on the Retirement Board subjected to such scrutiny and reimbursement policy. See Affidavit of Contributory Retirement Board Director, Debra J. Sullivan, annexed hereto and made a part hereof and marked as Exhibit B.

49. By denying Kelley the use of vacation time and reimbursement of same for sick leave under Chapter 41, Section 111F, he was subjected to different treatment than any other police officer or other Town employee in similar circumstances.

50. Further, by denying Kelley the reimbursement of funds, as aforesaid, and more importantly knowingly and intentionally forcing Kelley to take part in a drill any reasonably prudent person would have known would be a dangerous situation physically for Kelley, Pomeroy violated 42 U.S.C. 1983, because Pomeroy sought to harm Kelley and maliciously took action against him, exposing Kelley to treatment different from other officers on the force with the intent of causing Kelley harm.

51. Although Pomeroy ordered all police personnel to take part in the aforesaid Columbine like drill, he did so as a pretext to cover his true intentions to harm Kelley by forcing him to take part in an exercise that would be hazardous to him. Pomeroy did so fully knowing of Kelley's pre-existing medical conditions.

52. Pomeroy used the drill exercise as one more method to further harass Kelley in an effort to force him out of the Police Department and to retaliate against Kelley for reporting him to the State Inspector General.

Wherefore, Kelley demands a judgment for damages, both compensatory and punitive, against the Defendants in an amount this Court deems just and appropriate with interest, and cost of this action including attorney's fees.

**COUNT IV: DENIAL OF PLAINTIFF'S RIGHTS UNDER
M.G.L. CHAP. 41, SEC. 111F.**

53. The Plaintiff repeats and reavers paragraphs 1 through 53 as if expressly set forth fully herein.

54. As a result of having to take time to seek medical treatment, Kelley had to use some vacation time, which should have been reimbursed to him in the approximate amount of \$2,000.00. Kelley was entitled to reimbursement pursuant to Mass. Gen. Laws Chapter 41, Section 111F.

55. Kelley made numerous requests and demands for reimbursement for said days of vacation time to the Defendants, but was denied by Pomeroy and Plymouth through its Town Manager.

56. Kelley is specifically entitled to reimbursement of any benefits and rights as set forth in M.G.L. Chapter 41, Section 111F and refusal to compensate Kelley accordingly by the Defendants is a violation of Mass. Gen. Laws Chapter 41, Section 111F.

Wherefore, Kelley demands a judgment for damages, both compensatory and punitive, against the Defendants in an amount this Court deems just and appropriate with interest, and cost of this action including attorney's fees.

THE PLAINTIFF DEMANDS A TRIAL BY JURY.

THOMAS M. KELLEY, the Plaintiff,

By his attorney,

A handwritten signature in cursive script, reading "Joseph R. Gallitano".

Joseph R. Gallitano, BBO # 183700
Gallitano & Associates
34 Main St. Ext., Suite 202
Plymouth, MA 02360
(508) 746-1500

Dated: March 9, 2005

A TRUE COPY ATTEST

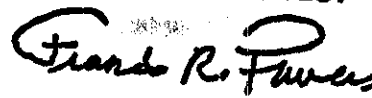
A handwritten signature in cursive script, reading "Grand R. Fowers".
CLERK

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT

C.A. NO. 05-0278B

THOMAS M. KELLEY,
Plaintiff,

V.

THE TOWN OF PLYMOUTH, ROBERT J. POMEROY, as Chief of the Plymouth Police Department and Individually,
Defendants.

VERIFICATION OF COMPLAINT

I, Thomas M. Kelley, being first duly sworn, state that I am the Plaintiff in the above-entitled action, that I have read the foregoing complaint and know the contents thereof, and that the same is true to my own knowledge and belief.


THOMAS M. KELLEY

Dated: March 7, 2005

A TRUE COPY ATTEST

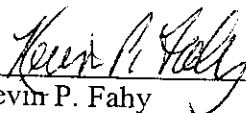
Grand R. Fuves
CLERK

EXHIBIT B


Affidavit of Kevin P. Fahy

1. I, Kevin P. Fahy, of Hedges Pond Rd., Plymouth, MA, am the 8 to 4 Shift Supervisor for the Plymouth Police Department in Plymouth, MA.
2. For over 18 years I was Officer Thomas Kelley's (Tom) supervisor, shift commander and friend.
3. While working for me on the 8 to 4 shift Tom was elected to the Plymouth Retirement Board.
4. A short time later Tom questioned Chief Robert Pomeroy's (Pomeroy) right to receive "incentive pay" and this signaled the beginning of Tom's every movement being scrutinized by Pomeroy and Captain Botieri (Botieri).
5. Botieri came into the lieutenant's office and he stated, "the chief doesn't like his money being fucked with".
6. I was told that when Tom went to his retirement board meetings he was to be logged off duty in the daily log.
7. If Botieri went by and found Tom at the Town Hall he wanted to know from me why he was there; the time he went off and the time he got back out on the road.
8. Tom was the only officer that I know of who was monitored everywhere he went.

Subscribed and sworn to under the pains and penalties of perjury this ^{23rd} day of June 2004.


Kevin P. Fahy

A TRUE COPY ATTEST


CLERK



TOWN OF PLYMOUTH

OFFICE OF THE

CONTRIBUTORY RETIREMENT BOARD

11 Lincoln Street
Plymouth, Massachusetts 02360-3325
FAX (508) 830-4019
(508) 830-4170

January 29, 2004

Mr. Thomas Kelley
41 Arlington Rd.
Plymouth, MA 02360

RE: Retirement Board Expense

Dear Mr. Kelley:

At your request, please accept this letter as verification that your service to the Town of Plymouth Retirement System, as its elected member, began in December 18, 1996.

During this time period, if you were scheduled to work your position as a full time police officer, and those hours conflicted with your service to the Retirement System, the Retirement System was required to reimburse the Town of Plymouth for those earnings by way of a charge back through payroll.

It has been my experience since 1991, as the Board Director, to have this be the practice in only your position. It is also noted, that there are other Board members who serve the Town as well as the System.

Yours truly,

A handwritten signature in cursive script, appearing to read "Debra J. Sullivan".

Debra J. Sullivan
Director



Printed on recycled paper.